



TEXAS FUNERAL SERVICE COMMISSION

8100 CAMERON RD., SUITE 550, AUSTIN, TX 78754-3896 • (512) 834-9992 • FAX (512) 834-1607

LARRY A. FARROW
Executive Director

RQ-774

December 1, 1994

DEC 02 84

Opinion Committee
Office of the Attorney General
P. O. Box 12548
Capitol Station
Austin, Texas 78711-2548

Opinion Committee

GOV
file #. ML-30661-94
JD# 30661

Re: Request for Opinion

Dear Committee:

The Texas Funeral Service Commission requests an opinion as to whether Tex. Govt. Code, Section 552.352 makes the release by the custodian of certain of the Commission's investigative reports to a Texas grand jury, in response to a subpoena from that grand jury, a misdemeanor offense and/or official misconduct by that custodian/employee of the Commission.

The investigative reports which are sought are produced and maintained by the Commission in furtherance of its regulation of individuals and establishments licensed by the Commission. Such documents are declared not to be public information by V.T.C.S. article 4582b, Section 6D(d). Attorney General Letter Opinion No. 94-024 previously determined that, on the basis of V.T.C.S. article 4582b, Section 6D(d), such documents are confidential for purposes of the Open Records Act, Section 552.101 and are not subject to "public" disclosure.

Tex. Govt. Code, Section 552.352 declares that a person commits an offense if the person "distributes information considered confidential under the terms of (the) chapter." Section 552.101 of the Chapter, in excepting from the disclosure information considered confidential by another statute, appears to "consider" the documents in question to be confidential. The language of Section 552.352 makes no distinction, however, between distribution of confidential information pursuant to an Open Records Act request and any other distribution of otherwise confidential information.

The release of the documents in question to the requesting grand jury would not appear to be a "public" disclosure, however, the potential of criminal sanction imposed by Section 552.352 raises sufficient concern as to cause the Commission to decline to make

Robert R. Dixon

Rosa P. Foster

Russell Allen

Martha Fitzwater

Robert G. Duncan

Scott Kurth

Millard F. Zeagler, Jr.

Norberto Salinas

Lois Villaseñor

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the requested disclosure to the grand jury without seeking the opinion of the Office of the Attorney General.

Enclosed is a copy of the subpoena which is the subject of this opinion request. Also enclosed are representative copies of the documents the Commission has declined to produce pending receipt of the requested opinion.

Any questions concerning this matter may be directed to me.

Yours, truly,

A handwritten signature in dark ink, appearing to read "Wayne L. Goodrum", is written over the typed name.

WAYNE L. GOODRUM
General Counsel

Enclosures

cc: Asst. Attorney General Richard Ybarra